

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: July 24, 1998

TO : Ralph R. Tremain, Regional Director
Region 14

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: International Boilermakers (Peerless Premier)
Case 14-CB-8936

536-2563

536-2565

This Section 8(b)(1)(A) case was submitted for advice on whether the International, with the consent of the Employer, unlawfully caused a unit which had been represented by its Local S-60 to become represented by its other Local S-4, without the consent of unit employees.

The Employer, a manufacturer of appliances, employs around 65 assembly employees who had been represented by Local S-4, and around 100 enamel employees who had been represented by Local S-60. Another appliance manufacturer, Roesch, also employed assembly employees represented by Local S-4, and enamel employee represented by Local S-60. In August 1997, the Roesch Local S-60 enamel employees requested that the International afforded them representation by a separate local. The International decided that it was inefficient to have two separate units at both the Employer and Roesch, with each unit represented by a different Local. The International therefore decided to change the representation of both units at each location as follows: at Roesch, Local S-60 would represent both units; and at the Employer, Local S-4 would represent both units.

In February 1998, the Employer agreed with this change by the International, and recognized Local S-4 for its enamel employees formerly represented by Local S-60. The Employer and the International further agreed that Local S-4 would continue the extant Local S-60 bargaining agreement, and also agreed that the parties would combine the two units at the expiration of that contract.

The Employer's enamel employees were not consulted over this change in their representation and disagreed with

this change, as did Local S-60 itself. Local S-60 not only opposed the change, but the instant charge was filed by the Acting President of Local S-60.

We conclude, in agreement with the Region, that further proceedings are warranted against this unlawful change in representative without the consent of represented employees.

A labor organization cannot substitute itself for a Section 9(a) representative, absent the consent of the represented employees.¹ We note, however, that the instant charge was filed solely against the International for having caused the transfer of jurisdiction between two of its locals.

In Joint Council of Teamsters No. 42 (Grinnell Fire Protection Systems Company, Inc.), 235 NLRB 1168 (1978), the Board dismissed a Section 8(b)(1)(A) complaint against an international union which similarly transferred representation of a unit from one of its constituent locals to another. In that case, however, the local which had been the Section 9(a) representative essentially disclaimed interest in further representation of the unit. And the local to which representational rights had been transferred disclaimed any representation of the one employee in that unit who had objected to the representational change. In those narrow circumstances, the Board found no violation by the international union, because there had been no coercion of the remaining unit employees essentially because of the disclaimer of their former representative.

In the instant case, Local S-60 did not disclaim interest in representing the Employer's enamel employees, who also strongly objected to this change in their representative. Thus, this case is well distinguished from Grinnell Fire Protection, and instead presents a naked and unlawful attempt to change union representatives without the consent of represented employees, during the term of

¹ See, e.g., The Gas Service Company, 213 NLRB 932 (1974); Carriage Oldsmobile Cadillac, Inc., 210 NLRB 620 (1974); Southern Oregon Log Scaling and Grading Bureau, 223 NLRB 430 (1976).

their bargaining agreement. Accordingly, the Region should issue complaint, absent settlement.²

B.J.K.

² [*FOIA Exemptions 2 and 5*